

Serial: **166593**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-DR-01043-SCT

EDDIE LEE HOWARD, JR.

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

CORRECTED ORDER

This matter came before the Court en banc on Eddie Lee Howard's Request for Post-Conviction DNA Testing and Motion for Post-Conviction Relief. The State has filed a response to the request and Howard has filed a reply to that response. Howard requests DNA testing of biological evidence and Howard contends that he has newly discovered evidence and seeks post-conviction collateral relief.

After due consideration, the Court finds that Howard's request for DNA testing should be granted. Miss. Code Ann. § 99-39-11(3) (Supp. 2010). This matter should be remanded to the Circuit Court of Lowndes County to proceed pursuant to Section 99-39-11(4) of the Mississippi Code regarding locating items of biological evidence to be tested. The circuit court should determine which laboratory or laboratories will conduct the testing pursuant to Section § 99-39-11(5) of the Mississippi Code. The circuit court should determine who will pay for the testing. Miss. Code Ann. § 99-39-11(6), (7) and (8). The circuit court may enter such other orders as may be appropriate pursuant to Sections 99-39-11(9) and (10) of the Mississippi Code. The Court further finds that all other issues raised by Howard, including

his claims of newly discovered evidence, should be dismissed without prejudice to be refiled with the DNA test results.

IT IS THEREFORE ORDERED that Eddie Lee Howard's Request for Post-Conviction DNA Testing and Motion for Post-Conviction Relief is hereby granted in part and dismissed without prejudice in part. Howard's request for DNA testing is hereby granted. This matter is remanded to the Circuit Court of Lowndes County to proceed as herein directed.

IT IS FURTHER ORDERED that all other issues raised by Howard, including his claims of newly discovered evidence, are hereby dismissed without prejudice to be refiled with the DNA test results.

IT IS FURTHER ORDERED that this order be published. The Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of the *Southern Reporter, Third Series (Mississippi Edition)*.

SO ORDERED, this the 2nd day of December, 2010.

/s/ William L. Waller, Jr.
WILLIAM L. WALLER, JR., CHIEF JUSTICE
FOR THE COURT